

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**Case No. 12-C-454
(Criminal Case No. 10-Cr-261)**

LEE PHAM,

Movant.

DECISION AND ORDER

Pro se movant Lee Pham (“Pham”), who has a pending motion under 28 U.S.C. § 2255 to vacate, set aside, or correct his sentence, filed motions for leave to proceed *in forma pauperis* for the purpose of obtaining a transcript of the sentencing hearing at no cost to him and for a transcript of his sentencing hearing.

Pham states that he is unable to pay the full cost of the sentencing hearing transcript that he requests. An indigent litigant may proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(a). Previously, in the underlying criminal action, Pham was found to be unable to pay the costs of his defense pursuant to 18 U.S.C. § 3006A, and he was represented by court-appointed counsel. (*See United States v. Pham*, No. 10-Cr-261 (E.D. Wis.) (ECF No. 9).)

Pham is incarcerated and there is no indication that his financial situation has improved in the intervening time period. However, he has not provided any details of his

financial situation. Under these circumstances, the Court conditionally grants Pham's motion for leave to proceed *in forma pauperis* as it pertains to the transcript of his sentencing hearing. However, the Court's ruling is conditioned upon Pham completing and filing, by the stated deadline, a petition and affidavit to proceed without prepayment of fees and/or costs to update his financial information. A copy of the proper form is enclosed with Pham's copy of this Decision and Order.

Section 753(f) of Title 28 of the United States Code provides that fees for transcripts furnished in proceedings brought under § 2255 to persons permitted to sue or appeal *in forma pauperis* shall be paid by the United States out of money appropriated for that purpose if the trial judge or a circuit judge certifies that the suit or appeal is not frivolous and that the transcript is needed to decide the issue presented by the suit or appeal. There is no filing fee for a § 2255 motion. However, previously, this Court found that Pham was unable to pay the costs of his criminal defense. Based on that prior status and his current incarceration, it has conditionally found that Pham is unable to pay the cost of his sentencing hearing transcript.

The Government has not filed a response to Pham's motions for leave to proceed *in forma pauperis* and for a transcript. Nonetheless, in response to his § 2255 motion, the Government asserts that Pham has waived his right to challenge his sentence while also acknowledging that there are two exceptions to such waiver. (Pl.'s Resp. § 2255 Mot. 5-6.) (ECF No. 10).

Having considered the issues Pham raises, the Court certifies that the action is not frivolous and that a transcript of the sentencing proceeding is necessary to resolve Pham's motion. Therefore, Pham's motion for the sentencing hearing transcript is conditionally granted. The sentencing hearing transcript will not be completed or filed until sometime after August 6, 2012. This interval will afford the Court an opportunity to review Pham's petition and affidavit to proceed without prepayment of fees and/or costs, and to revisit its determinations if necessary.

After Pham has received the sentencing hearing transcript, he may file a reply to the Government's response to his § 2255 motion. Such reply must be filed on or before September 14, 2012.

NOW, THEREFORE, BASED ON THE FOREGOING, IT IS HEREBY ORDERED THAT:

Pham's motion for leave to proceed *in forma pauperis* with respect to the transcript of his sentencing hearing (ECF No. 6) is conditionally **GRANTED**.

The Clerk of Court is **DIRECTED** to send Pham a copy of this District's petition and affidavit to proceed without prepayment of fees and/or costs.

No later than August 1, 2012, Pham must complete and file a petition and affidavit to proceed without prepayment of fees and/or costs to update his financial information.

Pham's motion for a transcript of his sentencing hearing (ECF No. 7) is conditionally **GRANTED**, and

No later than September 14, 2012, Pham may file a reply to the Government's response to his § 2255 motion.

Dated at Milwaukee, Wisconsin this 20th day of July, 2012.

BY THE COURT



Hon. Rudolph T. Randa
U.S. District Judge